IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1211 OF 2006

Dr.Satishkumar Yeshwant Sarode ...Petitioner
V/s.
The State of Maharashtra ...Respondent

Mr.A.S. Khandeparkar with Mr.A.R. Joshi for the Petitioner.
Mr.P.S. Hingorani, APP for State.

CORAM : V.M. KANADE, J.

DATED : AUGUST 14, 2007

P.C. :-

. Heard the learned Counsel for the petitioner and the learned APP for the State.

2. Rule. Respondent waives service. Rule is made returnable forthwith by consent of the parties.

3. The petitioner was attached to a Primary Health Centre, Lonand, District Satara. He was examined as a prosecution witness in Sessions Case No.43/2003. The Additional Sessions Judge, Baramati, District Pune, by his judgment in the said Sessions case came to the conclusion that the petitioner has given false evidence and therefore, issued Show Cause Notice against him

under Section 344 of the RC.P.C.

4. The petitioner being aggrieved by the aforesaid notice has filed this petition under Article 227 of the Constitution of India. The brief facts are that the petitioner was working as a Medical Officer in the Primary Health Centre, Lonand, Tal.Khandala, District Satara. A dead body was received by the hospital on 11th October, 2002 by 8.00 p.m. and he had to perform autopsy on the dead body of Dattatraya Bapu Pawar. After having performed the port mortem examination, the petitioner noted his observation in which he has stated that there were three CLW wounds on the head which observation was recorded in clause 19. He had also stated in the said notes that the cause of death was due to intra-cranial haemorrhage as a result of the head injury. A chargehseet was filed by the police and the case was committed to the Sessions Court. The petitioner was examined as a prosecution witness. The petitioner supported the prosecution case and after narrating the injuries recorded by him in the post mortem report, he gave his opinion that the injuries on

the head was sufficient to cause death and also stated that the injuries which were caused by the sickle which was showed to him. In his cross-examination, he stated that the injuries would be caused by the hard and blunt object. The prosecution did not declare the petitioner as a hostile witness since he had supported the prosecution case. The prosecution had also examined one other Medical Practitioner, Dr.Sanjay Sadashiv Shivade. This doctor performed the operation on the deceased who also gave his opinion that the injury could be caused by sickle. The said Dr.Shivade, however, stated in his evidence that the injuries were incised wounds. The trial Court convicted the accused by its order dated 13th December, 2005. However, in para 7 and 17 of the said judgment, the learned Judge came to a conclusion that the petitioner had fabricated and had given false evidence with ulterior motive of helping the accused and therefore, issued a Show Cause Notice to the petitioner.

5. The learned Counsel for the petitioner submitted that the petitioner being a doctor has given his expert opinion after having performed the post mortem. He

submitted that it is possible that the opinion given by two Doctors may slightly vary but it cannot be said by any stretch of imagination that by giving the said opinion, the Doctor has fabricated or has given false evidence.

6. The submission made by the learned Counsel for the petitioner will have to be accepted. I have perused the judgment and order passed by the trial Court. In the present case, two experts have given their opinion in respect of the injuries which were caused on the person of the deceased. Both the Doctors have stated that the injuries could have been caused by a sickle. While performing the port mortem, the petitioner has opined that these injuries are in the nature of CLW whereas the Doctor who performed the operation on the deceased while he was still alive has given an opinion that there were incised wounds. It is an admitted position that other injuries were caused on the skull. It is possible that the injuries may appear to be CLW and on closure inspection while performing an operation considering the depth of the wound, it might appear to

be an incised wound. Thus, both the Doctors had in fact supported the prosecution case and that there was no occasion for the learned Sessions Judge to have come to the conclusion that the petitioner had given false evidence. Admittedly, the petitioner was not declared as a hostile witness. He was not even cross-examined by the prosecution. In my view, the Show Cause Notice which is issued by the Sessions Judge, was to say the least, unwarranted and uncalled for.

7. The Show Cause Notice, therefore, is set aside. The petition is made absolute in terms of prayer clause (a).

(V.M. KANADE, J.)